

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO,
MISAEAL ALEXANDER MARTINEZ CASTRO, ANGEL
MARTINEZ, EDWIN ULLOA MOREIRA and MATEO
UMAÑA individually and on behalf of all others similarly
situated,

**Case No. 21-cv-09014
(PAE)(SDA)**

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW, JOHN
KELLY and JOSEPH PROVENZANO,

Defendants.

DECLARATION OF ANGEL MARTINEZ

I, Angel Martinez, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was employed by E.L.M. General Construction Corp. d/b/a Kelly's Crew ("ELM") from about December 2019 until approximately July 2021.
2. I worked as a laborer and form setter. My duties included construction helper, planting, building of parks on roof of buildings.
3. Kelco Construction, Inc. ("Kelco") and ELM share offices located at 25 Newton Place, Hauppauge, New York ("the Hauppauge facility").
4. The Hauppauge facility consists of offices, a prefabricated steel warehouse and storage facility, a yard (for storing mulch, topsoil, and other landscaping and construction materials), shipping containers for storing tools and equipment, large waste containers, and a parking lot.

5. ELM performed most of its work in New York City. When I worked, at least 25 employees reported to the Hauppauge facility each morning.

6. Upon arriving at the Hauppauge facility, ELM employees would load onto the company vehicles the materials and tools needed to complete the work for that day. An employee for each vehicle, usually the driver, would do an inventory of materials and tools to make sure everything was loaded. Then we would all travel in the company vehicles to the jobsites in New York City. At the end of the day, we would all travel from the jobsite to the Hauppauge facility. When we arrived at the Hauppauge facility at the end of the day, we would unload any unused materials and tools from the truck. We would also unload waste and garbage which we had collected during the day and dump it into the waste containers located at the Hauppauge facility. We would make sure the trucks were organized and clean at the end of each day. At the end of the week, on Fridays, upon arriving at the Hauppauge facility, we would clean the inside and outside of the vehicles using soap, water, brushes, hoses, and vacuums which were provided by ELM specifically for that purpose.

7. My fellow employees and I were not paid from the time we arrived at the Hauppauge facility until the vehicles were unloaded and cleaned at the end of the day. Instead, we were paid for the time we arrived at the jobsite. We were only paid from the time we were scheduled to start work at the jobsite (usually 6AM or 7AM) until we left the jobsite to return to the Hauppauge facility.

8. Most of my coworkers and I talked about how we didn't get paid for the travel time, we would often ask ourselves why we didn't get paid for all that time that we were loading the trucks and traveling into the city. Some of those coworkers were, Misael, Christian, Alexander, Jaime, Alex and Vicente.

9. On a few occasions I would talk to the foreman Christian, and I would mention to him, how I felt we should be getting paid for the time that we arrived at the facility and started to load the trucks. All he said was that he didn't understand either and would say that it was basically the way ELM paid people.

10. At times I was responsible for transporting other employees to the jobsite, sometimes I was received "drive time" pay. However, the drive pay did not depend on the actual time spent driving.

11. We would have meetings once a month or so, the last one I remember was in November of 2020. The manager would state to all the employees that we would only get paid for the hours worked at the job site. For example, if we went into the city, started working and it started to rain, we would have to stop working and would get paid for only those 4 hours and nothing else and then drive back into the Hauppauge facility.

12. At other times, my paystubs were confusing. For example, for the workweek ending March 27, 2021 I was paid for 36 hours at \$22 per hour, 4 hours at \$30 per hour, 10 hours at \$33 per hour, and three hours of drive time bonus pay at \$20 per hour. I do not understand why I was paid this way.

13. My primary language is Spanish. On December 21, 2022, this declaration was verbally translated to me into Spanish by Shirley Navarro-Losito.

14. I ask that the Court please authorize notice to my co-workers of the right to join this case.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: 12/21/2022



Angel Martinez

eSignature Details

Signer ID:	Moi6Wk7ii4Y5gJLSDcQe68pr
Signed by:	Angel Martinez
Sent to email:	martinezanjel643@gmail.com
IP Address:	67.82.137.222
Signed at:	Dec 21 2022, 12:47 pm EST